

REMARKS/ARGUMENTS

Applicants canceled claims 7, 13, 21, 27, 35, and 41.

The Examiner rejected claims 1-3, 5, 6, 8-12, 14-17, 19, 20, 22-26, 28-31, 33, 34, 36-40, and 42-45 as obvious (35 U.S.C. §103) over Bare (2003/0016624) in view of Hatakeyama (U.S. Patent No. 6,542,468) and Kinjo (U.S. Patent No. 6,944,684). Applicants traverse with respect to the amended claims for the following reasons.

Amended claims 1, 15, and 29 concern selecting one of multiple data paths to a device, and require: selecting one of multiple paths indicated as enabled to transmit data, wherein a path is indicated as enabled or disabled; gathering transfer time data for first and second transfer sizes for each path, wherein the transfer size is a size of the data being transferred in one transfer operation; determining one path currently indicated as enabled to be selected to transfer data for the first transfer size that has transfer time data for the first transfer size satisfying a threshold transfer time; and indicating the determined path as disabled for the first transfer size, wherein paths indicated as disabled for one of the transfer sizes are not capable of being selected to use to transmit data having the transfer size, wherein the determined path indicated as disabled for the first transfer size is enabled to transfer data for the second transfer size.

Applicants amended these claims to recite first and second transfer sizes instead of multiple sizes and change the “given transfer size” to the “first transfer size. Applicants further amended the claims to recite that the determined path indicated as disabled for the first transfer is capable of being enabled to transfer data for the second transfer size.

The Examiner cited col. 4, lines 53-60, col. 15, lines 1-9 and 56-60 of Hatakeyama as teaching the pre-amended claim requirement concerning determining one path indicated as enabled to transfer data for a transfer size that has transfer time data satisfying a threshold. (Sixth Office Action, pgs. 2-3). Applicants traverse with respect to the amended limitation which now recites determining one path currently indicated as enabled to be selected to transfer data for the first transfer size that has transfer time data for first transfer size satisfying a threshold transfer time.

The cited col. 4 discusses selecting an optimum path by recording transmission data and response times per unit data length of response data which is returned from a transmission destination node to a source node, and by estimating the response time for each path using the recorded information. The cited col. 15 discusses storing in an actual response time table the

request date and time when the service request was made, the request data length, the transmission source address, destination address and path selected.

Nowhere does the cited Hatakeyama anywhere teach or suggest determining a path that has transfer time data for a first transfer size satisfying a threshold transfer time. Although the cited Hatakeyama discusses maintaining response times for paths for selecting an optimal path, there is no teaching or suggestion of determining whether transfer time data for a transfer size for a path satisfies a threshold transfer time. Hatakeyama's discussion of recording response times for transmissions does not teach this claim requirement.

The Examiner further cited Hatakeyama with respect to the claim requirement of indicating the determined path as disabled for the first transfer size. (Sixth Office Action, pgs. 2-3) Although the cited Hatakeyama records response times for the purpose of selecting an optimum path, the Examiner has not cited any part of Hatakeyama that teaches or suggests that the path determined to have a transfer time for a first transfer size satisfying a threshold is indicated as disabled for the first transfer size. In other words, the cited optimization of Hatakeyama does not teach optimizing by disabling a path for a first transfer size when the transfer time for the first transfer size satisfies a threshold transfer time.

Applicants further submit that the cited col. 2, lines 29-38 of Kinjo also fails to teach the claim requirements of determining one path having a transfer time for a first transfer size that satisfies a threshold and then indicating that determined path as disabled for the first transfer size. (Sixth Office Action, pgs. 4-5) (Note, the Examiner cited col. 3, lines 29-38 of Kinjo, but Applicants submit the Examiner intended to cite col. 2, lines 29-38 which appears to describe the section of Kinjo the Examiner references, not col. 3).

The cited col. 2 of Kinjo discusses how a first communication path is used for a smaller first transfer size, less than a predetermined size, and a second communication path is used for a larger second transfer size, greater than the pre

Although Kinjo discusses how paths may be dedicated to different transfer sizes, there is no teaching or suggestion of determining a path that has transfer time data for the first transfer size satisfying a threshold and then indicating that the determined path is disabled for the transfer size. The cited Kinjo nowhere teaches or suggests that a path dedicated to a specific transfer size is tested to see if the path's transfer time for that transfer size satisfies a threshold and, then if so, disabling the path for the transfer size. Instead, the cited Kinjo discusses how paths are

dedicated to particular transfer sizes, but not how they may be disabled for a transfer size depending on their transfer time for a specific transfer size.

The Examiner further found that it would have been obvious to have “autonomous selecting an optimum path by recording transmission data and response time per unit data length of response data.” (Sixth Office Action, pg. 3) Applicants submit that the Examiner has mischaracterized the claims. The claims do not just require selecting an optimum path based on recorded response data, but instead require determining whether a path’s transfer time for a first or specific transfer size satisfies a threshold and then indicating that path is disabled for the transfer time if its transfer time for a specific transfer size satisfies the threshold. The cited Hatakeyama nowhere discloses that its recorded response data is used to determine whether path’s transfer time for specific transfer sizes satisfy thresholds.

In the Response to Arguments, the Examiner stated that “[o]ne ordinary skill in the art at the time of the invention knows that exceeding the threshold of the transfer size and deselecting it and selecting a path with a higher transfer size is also interpreted as disabling the for the given transfer size upon reaching certain threshold”. (Sixth Office Action, pg. 10)

The Examiner appears to take the position that deciding to use a first path for a first transfer size and second path for a second transfer size effectively disables the first path for the second transfer size. Notwithstanding, the claims require that the determination to disable is based on the transfer time for the specific transfer size satisfying a threshold. The Examiner has not cited any part of the art that teaches or suggests determining a path whose transfer time for a specific (first) transfer size satisfies a threshold transfer time and then disabling that path for that transfer size. Any implied disabling of paths in the cited art does not teach the specific requirements for disabling for a specific transfer size based on the transfer time for the transfer size.

If the Examiner maintains this rejection, Applicants request that the Examiner show where Kinjo or any other reference teaches or suggests determining a currently enabled path to transfer data for a transfer size that has a transfer time satisfying a threshold and then indicating that that determined path is disabled. The cited Kinjo only mentions one path enabled for one transfer size, and does not teach or suggest disabling an enabled path for a given transfer size when the transfer time for the given transfer size satisfies the threshold.

Accordingly, amended claims 1, 15, and 29 are patentable over the cited art because the requirements of these claims are not taught or suggested in the cited art.

Dependent claims 2-3, 14, 16, 17, 19-28, and 30-45 are patentable over the cited art because they depend from one of claims 1, 15, and 29, which are patentable over the cited art for the reasons discussed above. Moreover, certain of the below discussed dependent claims provide additional grounds of patentability over the cited art.

Claims 2, 16, and 30 depend from claims 1, 15, and 29 and further require indicating one disabled path as enabled after performing a threshold number of transfer operations. The Examiner cited col. 5, lines 37-42 of Hatakeyama as teaching the additional requirements of these claims. (Sixth Office Action, pg. 5). Applicants note that the Examiner cited this same section of Hatakeyama in the previous office action. Applicants traverse for the following reasons.

The cited col. 5 mentions a method for selecting a path of data transmitted from a source to a destination node, and a network path of data returned from the transmission destination node in an environment where nodes are distributed and located via a network.

Nowhere does this cited col. 5 anywhere teach or suggest the claim requirement of indicating one disabled path as enabled after performing a threshold number of transfer operations.

Moreover, the cited Hatakeyama teaches away from enabling a path after a threshold number of transfer operations as claimed because Hatakeyama discusses a selection method that estimates the response time of a path to select a path with the minimum estimated response time. (Hatakeyama, col. 5, line 37 to col. 6, line 5) Thus, Hatakeyama discusses a method for selecting a path that is different from the claimed selection after a threshold number of transfer operations are performed. In this respect, the cited Hatakeyama teaches away from the claim requirement of enabling after a threshold number of operations.

Applicants submit that the cited Hatakeyama's discussion of selecting the optimum path to use based on response data does not disclose the specific claim requirement of indicating a disabled path as enabled after performing a threshold number of operations. If the Examiner maintains the rejection of this claim, Applicants request that the Examiner specifically address the Applicants above argument that the cited col. 5 does not teach or suggest indicating one

disabled path as enabled after performing a threshold number of transfer operations, and cite to the specific sections of the art that teach or suggest this particular claim requirement.

Accordingly, claims 2, 16, and 30 provide additional grounds of patentability over the cited art.

Claims 3, 17, and 31 depend from claims 2, 16, and 30 and further require that the path indicated as disabled is disabled for a first threshold number of transfer operations if the transfer data time for the path satisfies a first threshold and is disabled for a second threshold number of transfer operations if the transfer data time for the path satisfies a second threshold.

The Examiner cited col. 11, lines 32-47 of Hatakeyama as teaching the additional requirements of these claims. (Sixth Office Action, pgs. 5-6) Applicants note that the Examiner cited this same section of Hatakeyama in the previous office action. Applicants traverse for the following reasons.

The cited col. 11 mentions an “RIR” which is a most recent influence rate index indicating how much difference exists between the time at which an actual response time is measured and the time at which the degree of fitness is calculated. A positive constant is a value obtained by subtracting the actual response time measured from the time at which RIR is used. A “DRTi” is an absolute value of the difference between the estimated response time of the time point at which the ith actual response time is measured.

The cited col. 11 discusses the parameters for a degree of fitness calculation which is a degree for determining how accurately the response time of a service request can be estimated. (Col. 11, lines 15-25). Nowhere does this cited section concerning the “degree of fitness” anywhere teach or suggest the claim requirement of disabling the path for a first threshold number of transfer operations if the path has a transfer data time satisfying a first threshold and disabling the path for a second threshold number of transfer operations if the path has a transfer data time satisfying a second threshold.

Nowhere in the cited col. 11 is there any teaching, suggestion or mention of disabling paths for first and second threshold number of transfer operations as claimed. Instead, the cited col. 11 concerns calculating a “degree of fitness”, which is a degree for determining how accurately the response time of a service request can be estimated.

In the Response to Arguments, the Examiner further cited col. 10, line 51-60 of Hatakeyama as teaching the requirements of these claims. (Sixth Office Action, pg. 11). Applicants traverse.

The cited col. 10 mention that a path calculating unit requests an optimum estimation individual and an actual response time, and can adjust the timing at which it requests the estimation individual. Hatakeyama further notes that the path calculating unit obtains the estimated response time of each of the paths by using the estimated individual and actual response time. (Col. 15, lines 45-60).

Applicants submit that the cited Hatakeyama's discussion of calculating a response time for paths and calculating a degree of fitness does not teach or suggest the specific claim requirement of disabling paths for first and second threshold number of transfer operations as claimed. Applicants submit that disabling a path for a different number of transfer operations if depending on which threshold the transfer data time for the path satisfies is different from Hatakeyama's discussed calculation of a response time for paths.

Accordingly, claims 3, 17, and 31 provide additional grounds of patentability over the cited art.

Amended claims 5, 19, and 33 concern selecting one of multiple data paths to a device, and require: selecting one of multiple paths indicated as enabled to transmit data for a plurality of transfer size ranges, wherein a path is indicated as enabled or disabled; for each enabled path, gathering a cumulative transfer time for all transfer operations for each of the transfer sizes during a measurement period through the path and a cumulative number of the transfer operations for each of the transfer size ranges during the measurement period; and for each enabled path determining the average cumulative transfer time for each of the transfer size ranges for the measurement period by dividing the cumulative time for the transfer size range by the cumulative number of transfers for the transfer size range; and indicating one of the paths as disabled for one of the transfer size ranges if the average cumulative transfer time for the path for the transfer size range satisfies a threshold, wherein the paths are capable of being selectively enabled and disabled for different transfer size ranges.

Applicants amended these claims to recite that the cumulative transfer time and cumulative number of transfer operations are gathered for each of the transfer size ranges and that the average cumulative transfer time is determined for each of the transfer size ranges by

dividing the cumulative time for the transfer size range by the number of cumulative transfers for the transfer size range, and that a path is disabled for a transfer size range depending on whether the average cumulative transfer time for the transfer size range satisfies a threshold. These added requirements are disclosed on at least pgs. 5-10 of the Specification.

The Examiner cited col. 22, lines 40-56 of Hatakeyama as teaching the pre-amended claim requirement for gathering the cumulative transfer time (Sixth Office Action, pg. 6), which now recites gathering a cumulative transfer time for all transfer operations for each of the transfer sizes during a measurement period through the path and a cumulative number of the transfer operations for each of the transfer size ranges during the measurement period. Applicants traverse with respect to the amended claims.

The cited col. 22 discusses a response time for paths that can be estimated even if response data cannot be collected by using previously stored actual response time per unit data length. Although the cited col. 22 discusses using stored response times per unit data length, nowhere does the cited col. 22 anywhere teach, suggest or mention gathering a cumulative transfer time and cumulative number of transfer operations for each of the transfer size ranges. Instead, the cited col. 22 discusses response time for paths, not cumulative transfer times and number of operations for different transfer size ranges as claimed.

The Examiner cited col. 22, lines 57-64 of Hatakeyama as teaching the claim requirements that for each enabled path, determining the average cumulative transfer time (Sixth Office Action, pg. 6), which now recites for each enabled path, determining the average cumulative transfer time for each of the transfer size ranges for the measurement period by dividing the cumulative time for the transfer size range by the cumulative number of transfers for the transfer size range. Applicants traverse with respect to the amended claims.

The cited col. 22 mentions that with the path selecting method using actual response time per unit data length, the overall response performance from the path is evaluated so an optimum path may be selected. Although the cited col. 22 discusses using information concerning an actual response time per unit data length to select an optimum path, this measured information is different from and does not teach or suggest the claimed information of the average cumulative transfer time for each of the transfer size ranges calculated by dividing the cumulative time for the transfer size range by the cumulative number of transfers for the transfer size range. There is no mention in the cited col. 22 of determining path performance based on dividing a

cumulative time by the number of transfers for each of the transfer size ranges, where there are different values for different transfer size ranges. Instead, the cited col. 22 discusses using the response time per unit data length, not number of transfers as claimed. Moreover, nowhere does the cited col. 22 anywhere teach or suggest indicating a path as disabled if the average cumulative transfer time for the path satisfies the threshold.

Applicants submit that the cited Hatakeyama's discussion of using an actual response time per unit data length to select an optimum path does not teach or suggest the claim requirement of gathering a cumulative number of the transfer operations during a measurement period for each of the transfer size ranges. If the Examiner maintains the rejection of this claim, Applicants request that the Examiner specifically address the Applicants' above argument that the cited col. 22 does not teach or suggest gathering the number of transfers for each path and for each of the transfer size ranges or the information of the average cumulative transfer time by dividing the cumulative time by the cumulative number of transfers for transfer size ranges.

Accordingly, amended claims 5, 19, and 33 provide additional grounds of patentability over the cited art.

Claims 6, 8-11, 13, 14, 20, 22-26, 28, 34, 36-40, and 42 are patentable over the cited art because they depend from one of claims 5, 19, and 33, which are patentable over the cited art for the reasons discussed above. Moreover, the following dependent claims provide further grounds of patentability over the cited art.

Amended claims 6, 20, and 34 recite that the measurement period comprises a number of transfer operations for all paths, wherein the determination to disable paths occurs after the number of transfer operations in the measurement period has occurred, and further comprising starting another measurement period to gather transfer time data for the transfer size ranges after determining paths to disable.

Applicants amended these claims to recite that a measurement period to gather transfer time data is started for transfer size ranges.

The Examiner cited col. 23, lines 14-19 of Hatakeyama as teaching the claim requirements for the pre-amended claim requirement that the measurement period comprises a number of transfer operations for all paths, wherein the determination to disable paths occurs after the number of transfer operations in the measurement period has occurred. (Sixth Office Action, pg. 6) Applicants traverse.

The cited col. 23 mentions that as the number of nodes and path patterns to be selected grow, the amount of calculation time for estimating an optimum path increases, but the algorithm allows estimation with a relatively small amount of calculation despite increased complexity. This discussion of the scalability of the discussed algorithm nowhere teaches or suggests the claim requirement that a measurement period comprises a number of transfer operations for all paths for different transfer size ranges. Instead, the cited col. 23 mentions that the algorithm operation time increases as complexity of the network increases. Applicants submit that this cited col. 23 does not teach, suggest, or concern the claim requirements that the measurement period comprises a number of transfer operations for transfer size ranges. Further, nowhere does the cited col. 23 anywhere teach or suggest the claim requirement that the determination to disable paths occurs after the number of transfer operations in the measurement period has occurred.

The Examiner cited col. 23, lines 20-26 of Hatakeyama for the claim requirement, which now recites starting another measurement period to gather transfer time data for the transfer size ranges after determining paths to disable. (Sixth Office Action, pg. 6)

The cited col. 23 mentions that with the algorithm it is sufficient to calculate a difference of an estimation individual, which occurs due to a network environment change, and that it does not require performing a calculation based on the entire environmental data each time a path is selected.

Nowhere does the cited col. 23 anywhere teach, suggest or mention the claim requirement of starting another measurement period to gather transfer time data for the transfer time ranges after determining paths to disable. Instead, the cited col. 23 mentions that the calculation does not have to occur each time a path is selected.

If the Examiner maintains this rejection, Applicants request that the Examiner specifically show where the cited art teaches determination to disable paths occurs after the number of transfer operations in the measurement period has occurred and starting another measurement period to gather transfer time data for the transfer time ranges after determining paths to disable.

Accordingly, claims 6, 20, and 34 provide additional grounds of patentability over the cited art.

Amended claims 8, 22, and 36 depend from claims 5, 19, and 33, respectively, and further require that the determination to disable paths for one of the transfer size ranges occurs after the number of transfer operations in the measurement period has occurred, and further comprising starting another measurement period to gather transfer time data for the transfer size ranges after determining paths to disable for the transfer size ranges.

Applicants amended these claims to recite that the determination to disable paths is for one transfer size range and that transfer time is gathered for transfer size ranges.

The Examiner cited col. 14, lines 54-64 of Hatakeyama as teaching the claim requirement that the measurement period comprises a number of transfer operations for all paths for a transfer size, wherein the determination to disable paths for a transfer size occurs after the number of transfer operations in the measurement period has occurred. (Sixth Office Action, pg. 7) Applicants traverse with respect to the amended claims.

The cited col. 14 mentions that the estimated response time for each of the paths is obtained based on the estimation individual and actual response times. A path calculating unit knows at least one of the possible available paths and collect the information of one available path.

Nowhere does this cited col. 14 anywhere teach or suggest the claim requirement that the measurement period comprises a number of transfer operations for all paths for a transfer size range, wherein the determination to disable paths for a transfer size occurs for one of the transfer size ranges after the number of transfer operations in the measurement period has occurred. There is no mention in the cited col. 14 that the measurement period comprises a number of transfer operations for determining to disable paths for a transfer size range.

Accordingly, claims 8, 22, and 36 provide additional grounds of patentability over the cited art.

Amended claims 9, 23, and 37 depend from claims 5, 19, and 33 and further require that the transfer time is measured for the transfer size ranges from the time the transfer is sent to the device to the time a response is received from the device indicating that the transfer completed, further comprising adding the transfer time for a transfer transmitted down the path to the cumulative transfer time for the transfer size range for the path.

Applicants amended these claims to recite that the transfer time is measured for the transfer size ranges and that the cumulative transfer time is for a transfer size range.

The Examiner cited col. 22, lines 40-56 of Hatakeyama as teaching the additional requirements of these claims. (Sixth Office Action, pg. 7) Applicants traverse for the following reasons.

As discussed, the cited col. 22 mentions that a response time for paths can be estimated even if response data cannot be collected by using previously stored actual response time per unit data length. Although the cited col. 22 discusses stored response times per unit data length, nowhere does the cited col. 22 anywhere teach, suggest or mention maintaining a cumulative transfer time for the transfer size range for a path. Instead, the cited col. 22 discusses a response time per unit data length, but does not mention or suggest a cumulative transfer time for a transfer size range for a path.

Accordingly, claims 9, 22, and 37 provide additional grounds of patentability over the cited art.

Claims 10, 24, and 38 depend from claims 5, 19, and 33, respectively, and further require That for each enabled path, determining a best average transfer time for each of the transfer size ranges from the average cumulative transfer times for each of the transfer size ranges for all paths, wherein determining whether the average cumulative transfer time for one path and transfer size range satisfies the threshold comprises determining whether the average cumulative transfer time for the transfer size range and the path exceeds the best average transfer time for the transfer size range by a percentage amount.

Applicants amended these claims to require determining a best average transfer time for each of the transfer size ranges from average cumulative transfer times for each of the transfer size ranges, and determining the average cumulative transfer time for a path and transfer size range.

The Examiner cited col. 22, lines 40-56 of Hatakeyama as teaching the pre-amended claim requirements. (Sixth Office Action, pgs. 7-8) Applicants traverse with respect to the amended claims.

As discussed, the cited col. 22 discusses that a response time for paths can be estimated even if response data cannot be collected by using previously stored actual response time per unit data length. Although the cited col. 22 discusses stored response times per unit data length, nowhere does the cited col. 22 anywhere teach or mention determining a best average transfer

time for each of the transfer size ranges from the average cumulative transfer times for each of the transfer size ranges for all paths.

The Examiner further cited col. 11, lines 48-59. (Sixth Office Action, pg. 8) Applicants traverse with respect to the amended claims.

The cited col. 11 mentions that if an actual response time matches an estimated response time, the degree of fitness becomes "1". The degree of fitness is defined as a degree for determining how accurately the response time of a service can be estimated. (Col. 11, lines 16-20). A degree of fitness closer to one means that the estimation individual has higher genes. Applicants submit that this cited degree of fitness does not concern nor suggest the claim requirement of determining whether the average cumulative transfer time for the path and for each of the transfer size ranges exceeds the best average transfer time for each of the transfer size ranges by a percentage amount.

Accordingly, amended claims 10, 24, and 38 provide additional grounds of patentability over the cited art.

Amended claims 11, 25, and 39 depend from claims 10, 24, and 38 and further require determining whether the average cumulative transfer time for each of the transfer size ranges satisfies the threshold further comprises disabling the path for one of the transfer size ranges for a first number of transfer operations if the average cumulative transfer time for the transfer size range for the path exceeds the best average transfer time for the transfer size range by a first percentage amount and disabling the path for the transfer size range for a second number of transfer operations in response to determining that the average cumulative transfer time for the transfer size range for the path exceeds the best average transfer time by a second percentage amount.

Applicants amended these claims to include the requirements that the best average transfer time and path disabling are performed for transfer size ranges and to change "if" to "in response" language.

The Examiner cited col. 22, lines 40-56 of Hatakeyama as teaching the additional requirements of these claims. (Sixth Office Action, pg. 8). Applicants traverse for the following reasons.

As discussed, the cited col. 22 discusses that a response time for paths can be estimated even if response data cannot be collected by using previously stored actual response time per unit

data length. Although the cited col. 22 discusses stored response times per unit data length, nowhere does the cited col. 22 anywhere teach, suggest or mention the claim requirements of disabling the path for one of the transfer size ranges for a first number of transfer operations if the average cumulative transfer time for the path exceeds the best average transfer time by a first percentage amount and disabling the path for the transfer size range for a second number of transfer operations if the average cumulative transfer time for the path exceeds the best average transfer time for the transfer size range by a second percentage amount. In the cited col. 22 there is no mention of disabling paths for transfer size ranges, nor considering best average transfer times for transfer size ranges in deciding when to disable paths for transfer size ranges.

Accordingly, claims 11, 25, and 39 provide additional grounds of patentability over the cited art.

Applicants added claims 46, 47, and 48 that depend from claims 1, 15, and 29 and further require that the threshold transfer time comprises a first threshold transfer time and wherein the determined path disabled for the first transfer size is enabled for the second transfer size in response to transfer time data for the second transfer size for the determined path not satisfying a second threshold transfer time.

The additional requirements of these claims are disclosed in the Specification at pgs. 7-11 and FIGs. 3, 4, and 5.

Applicants submit that these added claims are patentable over the cited art because they depend from one of claims 1, 15, and 29, which are patentable over the cited art for the reasons discussed above and because the additional requirements of these claims in combination with the base claims provides further grounds of patentability over the cited art.

Request for Interview

Applicants request the Examiner to contact the attorney of record to discuss any concerns or issues the Examiner may have with respect to this amendment.

Conclusion

For all the above reasons, Applicant submits that the pending claims 1-3, 5, 6, 8-12, 14-17, 19, 20, 22-26, 28-31, 33, 34, 36-40, and 42-48 are patentable over the art of record.

Applicants submit that no additional fees are needed to enter these amendments. Nonetheless, should any additional fees be required, please charge Deposit Account No. 09-0466.

The attorney of record invites the Examiner to contact him at (310) 553-7977 if the Examiner believes such contact would advance the prosecution of the case.

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